

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Pruett Oil Company, Inc.** )

Company Trailer No. 1 )

Uniontown, Perry County, Alabama )

ADEM Permit No. 107-T001-X001 )

**CONSENT ORDER**

No.

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Pruett Oil Company, Inc. (hereinafter, "Pruett Oil") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. Pruett Oil is the permitted owner and/or operator of a gasoline transport vessel (hereinafter, "tank truck") operating in Uniontown, Perry County, Alabama. The tank truck is operating under the authority of ADEM Permit No. 107-T001-X001 (hereinafter, the "Permit") issued on June 17, 2008 (ADEM Air Sticker #00199 that expires in June 2009).

2. The Department is a duly constituted department of the State of Alabama pursuant to

§§22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to §22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.07(3) states:

No owner or operator may transfer, cause, or allow the transfer of gasoline from any gasoline tank truck into any stationary storage tank subject to this Rule, unless the tank is equipped with a submerged fill pipe and the vapors displaced from the storage tank during filling are processed by a vapor control system in accordance with paragraph (4) of this Rule.

5. On March 20, 2009, Department personnel observed Pruett Oil delivering gasoline to an underground gasoline storage tank at Best Mart (Air Permit No. 107-G009-X001), located at Highway 80 E. & Broadway Street in Uniontown, Alabama without utilizing the required vapor balance system.

6. On April 2, 2009, the Department issued a Notice of Violation (NOV) to Pruett Oil, citing a violation of ADEM Admin Code r. 335-3-6-.07 (5) and ADEM Admin. Code r. 335-3-6-.20 (5) for allowing gasoline to be transferred between a tank truck and a gasoline storage tank without utilizing the vapor balance system.

7. On April 15, 2009, Pruett Oil submitted a response to the NOV stating that the driver was in clear violation with Pruett Oil's policies/procedures and that the driver's has been reprimanded and placed on probation.

8. Pruett Oil consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting

the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Pruett Oil transferred gasoline from its tank truck into the gasoline storage tank without processing the gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere. The Department considers this to be a serious violation.

B. **THE STANDARD OF CARE:** By not operating the tank truck in such a manner as to comply with the Permit, Pruett Oil did not exhibit a high standard of care.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department is not aware of any evidence that these violations resulted in significant economic benefit to Pruett Oil.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts made by Pruett Oil to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: There is no history of prior enforcement actions for similar violations against Pruett Oil by the Department.

F. THE ABILITY TO PAY: Pruett Oil has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, Pruett Oil, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Pruett Oil agree to enter into this ORDER with the following terms and conditions:

A. Pruett Oil agrees to pay to the Department a civil penalty in the amount of \$3,500.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Pruett Oil agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Pruett Oil agrees to submit a plan to the Department detailing how it will ensure that the vapor balance system is always utilized during the transfer of gasoline from a tank truck into a gasoline storage tank not later than forty-five days from the effective date of this Consent Order.

D. Pruett Oil agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07 and ADEM Admin. Code r. 335-3-6-.20 immediately upon the effective date of this Consent Order and continuing every day thereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Pruett Oil agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Pruett Oil agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the

Circuit Court of Montgomery County. Pruett Oil also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Pruett Oil shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Pruett Oil, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Pruett Oil) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Pruett Oil, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and Pruett Oil agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Pruett Oil shall not object to such future orders, litigation or enforcement action

based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and Pruett Oil agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Pruett Oil does hereby waive any hearing on the terms and conditions of same.

K. The Department and Pruett Oil agree that this Order shall not affect Pruett Oil's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and Pruett Oil agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and Pruett Oil agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The Department and Pruett Oil agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Pruett Oil agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Pruett Oil of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

PRUETT OIL COMPANY, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Onis "Trey" Glenn, III  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_